

REMARKS

By the Office Action of 02 August 1999, Paper No. 3, Claims 1-9 are pending in the application, and are currently rejected by the Examiner. By the present Response and Amendment, Claim 1 is amended to correct a misplaced phrase, and Claim 9 is amended to end the Claim with a period, not a semi-colon. No new matter is believed introduced by the present Response and Amendment. Applicant respectfully submits that the present application is now placed in full condition for allowance for the reasons given below.

1. The Claims Rejection Under 35 U.S.C. §103

Claims 1-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,607,091 to Musacchia ("the '091 patent"). The Examiner alleges that the unitary game call of the present invention is obvious in view of the '091 patent "since this would aid in the portability and usage of the device." Office Action, p. 3.

Mr. Musacchia, now deceased, is the inventor listed on the '091 patent, and is the father of the inventor of the instant device. Both men worked together for a number of years in the family business, now run by the present inventor and his sister, and, thus, Mr. Musacchia, Jr. is well aware of his customer's needs and complaints regarding game calls.

The '091 device is a game call *holder*, and not a game call like the present application. Upon production and sale of the game call *holder* of the '091 patent, the Musacchias received numerous inquires and complaints regarding disadvantages of his '091 Holder. Several of the disadvantages of the '091 included:

1. Customers complained of lost game calls using the '091 holder. Game calls can cost upwards of \$80, and sometimes became dislodged from under the tie-down straps of the holder upon sudden movement. Thus, after the hunter got his shot off, and he began his run toward the game, the game call would fall to the ground. As everything related to the hunt was camouflaged, including the call, it was rare for a dropped call to be found.

2. Customers also sought more realistic sound from their calls. As calls of several dimensions could fit on the '091 holder, depending on proper fit, the sound of the game used in connection with the holder was not always true.

3. Customers also questioned the costs associated with buying separate game calls and holders.

With these comments in mind, the inventor designed the present unitary game call in an attempt to address these disadvantages, as is disclosed in the application:

In U.S. Patent No. 5,607,091 to Musacchia, is described a universal game call holder, which holder device comprised a platform to be used in conjunction with a separately purchased prior art call, wherein the call is retained in the platform by a retaining element. With the '091 holder, the conventional call slips within an aperture in the platform, which platform elevates the bottom of the call away from the user's limb.

The Musacchia device [of the '091 patent] discloses and claims only a game call platform having, among other things, a retaining element to maintain the hunter's call in contact with the platform. The present invention obviates the need for: 1) a separate platform; 2) a retaining element to secure the call to the holder; and 3) a separate call. The present call is a unitary call device, eliminating any construction by the user, and having no retaining element to use, repair or replace. Specification, p. 3, lines 3-13.

As further disclosed, the present invention provides numerous advantages over the prior art, including the '091 holder:

The present game call has a number of advantages over the above prior art. The unitary game call production costs are lower than the production costs associated with independently producing a game call and a holder. Therefore, the costs to the hunter for a game call that is elevated from the hunter's limb, while being attached thereto, will be less. Additionally, the prior art holder and aperture therethrough are of one design, while the sound emanating surface of the game call placed in the holder maybe an entirely different design. The present invention is manufactured as one piece. Therefore, the acoustics of the present invention are considerably better than the prior art acoustics. The sound emanating surface of the present invention is not hindered or impeded by a misshaped aperture for the specific game call used in the prior art. Specification, p. 4, lines 18-27.

A Declaration Under 37 C.F.R. §1.132 Of John Musacchia, Jr. is enclosed herewith, indicating the long-felt but unsolved need addressed by the present invention as detailed above. The signed, faxed copy of the Declaration is followed by an unsigned, clearer copy for the Examiner's benefit. A Declaration containing evidence of long-felt but unsolved needs must be considered by the examiner in determining the issue of obviousness of claims for patentability under 35 U.S.C. §103. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

Applicant submits that the present invention is non-obvious in view of the '091 reference, and respectfully requests reconsideration of this ground of rejection.

CONCLUSION

By the present Response and Amendment, the application has been in placed in full condition for allowance. Accordingly, Applicant respectfully requests early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 404.875.3555.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents Washington, D.C. 20231, on 2/2/00

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Name of Applicant Assignee, or
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Signature

February 2, 2000

Date

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